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In re Application of
BEHAN, et al.
Application No.: 10/088,601
PCT No.: PCT/GB00/03672
Int. Filing Date: 25 September 2000
Priority Date: 24 September 1999
Attorney Docket No.: 056646-5004
For: DISPENSING DEVICE

DECISION ON PETITIONS

UNDER 37 CFR 1.181 AND

37 CFR 1.42

This decision is in response to the applicant's facsimile submission filed 27 February 2004 in the United States Patent and Trademark Office (USPTO). The submission is being treated as a petition under 37 CFR 1.181 and renewed petition under 37 CFR 1.42. No petition fees are required.

BACKGROUND

On 02 May 2003, applicant was mailed a decision refusing applicant's request for status under 37 CFR 1.42. Applicant was afforded two months to file any request for reconsideration and advised that this period was extendable pursuant to 37 CFR 1.136(a).

On 27 February 2004, applicant filed the present response accompanied by a copy of a renewed petition originally filed 29 August 2003, a stamped return postcard and a declaration executed by the executrix to the estate of deceased inventor Gerry Hart.

DISCUSSION

I. Petition Under 37 CFR 1.181

The best evidence of what was actually received by the Office is a postcard receipt containing a specific itemization of all the items being submitted. See MPEP 503.

Here, applicant has provided a copy of a date-stamped filing receipt. The receipt identifies the application by first inventor, attorney, and the docket number. The receipt identifies the U.S. serial number as 10/088,601. The receipt is stamped "OIPE JC98 Patent and Trademark Office AUG 29 2003" across its face. The postcard lists: 1. Renewed Petition under 37 CFR 1.42 and 2. Supplemental Declaration of Susan Hart. Thus, it is clear that applicant filed these items originally on 29 August 2003 and applicant's petition under 37 CFR 1.181 to accept the papers

filed 27 February 2004 as being filed 29 August 2003 is **GRANTED**. An examination of the papers finds that applicant authorized the deduction of a two-month extension of time fee from Deposit Account No.: 50-0310. As such, the 29 August 2003 filing is considered timely filed.

II. Renewed Petition Under 37 CFR 1.42

Pursuant to 37 CFR 1.42, first sentence:

“In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain a patent.”

Applicant's original request for status under 37 CFR 1.42 was dismissed as the filed declaration was not in compliance with 37 CFR 1.497 (a)-(b) in that it was unclear whether the declaration set forth the residence, post office address and country of citizenship of Gerry Hart or the Executor as required under 37 CFR 1.497(b).

Applicant has presently filed a declaration executed by the executor, Susan Hart providing the residence, post office address and country of citizenship of both herself and her deceased husband, deceased joint inventor, Gerry Hart.

Therefore, it is proper to grant applicant's petition at this time.

CONCLUSION

Applicant's renewed request for status under 37 CFR 1.42 is **GRANTED**.

This application will be given an international application filing date of 25 September 2000 and a date of **29 August 2003** under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

This application is being returned to the DO/EO/US for processing in accordance with this decision.



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